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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,127	01/18/2006	Robert H. Wohleb	090238-00178	7811
30993 7590 06/23/2009 CRAIN, CATON & JAMES FIVE HOUSTON CENTER 1401 MCKINNEY, 17TH FLOOR HOUSTON, TX 77010				
EXAMINER LUDLOW, JAN M				
ART UNIT		PAPER NUMBER		
1797				
MAIL DATE		DELIVERY MODE		
06/23/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/565,127

**Applicant(s)**

WOHLEB, ROBERT H.

**Examiner**

Jan M. Ludlow

**Art Unit**

1797

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 8, 9, 15-18, 21, 22, 26-30, 35-37 and 42-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8, 9, 15-18, 21, 22, 26-30, 35-37 and 42-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-849)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

Art Unit: 1797

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-4, 8-9, 15-16-18, 21-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Lee (5766660).

Lee teaches vessel 10 with top neck opening covered by cap 20 having a top cover and threaded sidewall depending therefrom for engaging the neck of the vessel.

Alternatively, the cap may be applied by snap fit or force (slide) fit (col. 3, lines 29-30).

The interior surface of the top of the cap is coated (covered with a thin layer of) porous filter material containing an adsorbent immobilized by the porous filter layer, such as activated carbon, zeolite (molecular sieve) or cristobalite (col. 3, lines 44-45). It is the examiner's position that these sorbents would be understood to inherently be formed as particles in their most common usage. It is the examiner's position that cover 32 over vent 22 is penetrable by a syringe, since the vent may be up to 3mm in diameter (col. 3, lines 39-40).

5. Claims 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee.

Lee fails to teach the claimed cap structure in which the side wall of the cap is friction fit inside the neck of the vessel.

It would have been obvious to make the cap of Lee as a stopper type cap in which the sidewall of the cap is fit within the neck of the vessel in order to form a known friction fit cap, a friction fit cap being taught by Lee.

6. Claims 1-4, 15-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Forsyth (6825046).

Forsyth teach a vessel 6 with neck and opening capped by cap 3A, 4A having porous sorbent coated surface 1A. (col. 3, lines 36-60; Figures 3-4). The cap is applied to the vessel, analyte extracted, the coating portion withdrawn into a tube within the cavity of the cap, the cap removed and the fiber placed in a second vial for extraction

prior to injection into an analyzer (col. 4, lines 5-37). It is the examiner's position that the Teflon seal is penetrable within the crimp cap as was known in the art.

7. Claims 26-27, 29-30, 45, 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forsyth.

Forsyth fails to teach the Teflon seal as a stopper (i.e., a cap having a sidewall within the neck of the vessel), or recapping the first vessel and capping the second.

It would have been obvious to provide the Teflon seal of Forsyth in the form of a stopper as an alternative known sealing member for a crimp or screw top vial as was known in the art.

It would have been further obvious to provide a second cap on the first vessel in order to preserve for future testing and/or prevent spillage as was known in the art. It would have been obvious to provide the entirety of the first cap to the second vial in order to completely and/or partially seal it during the second extraction process so as to prevent evaporation and/or contamination as was known in the art.

8. Claims 8-9, 15, 21-22, 28, 36-37, 42-43, 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forsyth as applied to claims above, and further in view of Pawliszyn (2002/0178797).

Forsyth fails to teach a particulate coating.

Pawliszyn teaches a device similar to that of Forsyth. The fiber can be coated with particulate [0080].

It would have been obvious to coat the fiber of Forsyth with particulate in order to sorb analytes as taught by Pawliszyn.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rits additionally teaches a coated cap with sorbent and penetrable port.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jan M. Ludlow whose telephone number is (571) 272-1260. The examiner can normally be reached on Monday, Tuesday and Thursday, 11:30 am - 8:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jan M. Ludlow  
Primary Examiner  
Art Unit 1797

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/Jan M. Ludlow/  
Primary Examiner, Art Unit 1797